

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA No.4667 of 2017 (O & M)
Date of Decision:07.12.2017

Nirmal Singh

...Appellant

Versus

Kashmir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Singla, Advocate
for the appellant.

Mr. P.S. Brar, Advocate
for the caveator-respondent.

ANIL KSHETARPAL, J.(Oral)

CM No.12328-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 15 days in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 31.03.2008. It was pleaded that out of total sale consideration of Rs.13,00,000/-, Rs.9,00,000/- was paid as earnest money. The date for execution and registration of sale deed was fixed as 04.04.1999. However, 4.4.2009 was Saturday and 5.4.2009 was Sunday, therefore, the plaintiff went to the Office of the Sub Registrar on 06.4.2009 and got his presence marked.

agreement but submitted that he used to borrow the amount from the husband of the plaintiff and as a collateral security the agreement was entered into. He further submitted that the defendant had also executed an agreement on 04.08.2005. He further submitted that on that very day i.e. 31.03.2008, defendant had also executed a sale deed in favour of the plaintiff with respect to plot at Malwal Road (Ex.D-2). Defendant further submitted that, however, the agreement to sell which was executed as a collateral security was not returned.

Both the Courts after appreciating the evidence available on the file, held that the agreement to sell is proved. However, the Courts found that the agreement to sell was not intended to be acted upon.

In these circumstances, the Courts have ordered refund of the earnest money along with interest @ 12% from the date of decree and thereafter 6% per annum.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below. He has contended that on 31.03.2008, two documents were executed. First agreement to sell in question was executed. However, husband of the plaintiff did not feel satisfied and, therefore, the defendant had to execute sale deed with respect to plot at Malwal Road, Ferozepur. He has submitted that in fact the agreement to sell in question was to be returned, on execution of the sale deed.

I have considered the submission. Both the Courts after appreciation of evidence have held that the defendant-appellant has failed to lead any evidence in this regard.

executed two documents. If the argument of learned counsel for the appellant is accepted then there should have been agreement with regard to plot of the property at Malwal Road, Ferozepur. This is not the case here.

In the present case, the defendant admits execution of agreement to sell. It was for him to prove that this agreement was not for consideration and it was to be returned on the execution of the sale deed.

Still further, both the Courts have noticed that the defendant had even issued cheques in favour of the husband of the plaintiff, which were dishonoured and proceedings under Section 138 of the Negotiable Instruments Act have been initiated.

Taking into consideration these facts, it would not be possible for this Court to reverse the findings of fact arrived at by the Courts below only on the basis of assumptions.

In the absence of any evidence to prove that this agreement to sell stood cancelled or the amount stood adjusted, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

07.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No